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Forest Service Revenue-Sharing Payments: Legislative Issues

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ABSTRACT

The Forest Service returns 25% of its revenues to the states for use on schools and roads in the counties where the national forests are located; the BLM returns 50% of its revenues to the counties containing the Oregon & California grant lands. Declining timber sales have reduced these payments, and some interests are concerned about payment fluctuations and about county incentives to support timber sales and other revenue-generating activities. This report describes the current situation and concerns, and examines the structure and consequences of alternative proposals. It will be updated as events warrant.

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Forest Service Revenue-Sharing Payments: Legislative Issues

Summary

The Forest Service (FS) returns 25% of the revenues from each national forest to the states for use on roads and schools in counties where the forests are located; the Bureau of Land Management shares 50% of its revenues with counties containing the Oregon & California grant lands. Concerns over these payments have arisen, because declining timber sales have reduced revenues for these payments. Groups are also concerned about the substantial annual variation in payments. Some interests are also seeking to "de-link" the payments, so that counties no longer benefit directly from revenue-generating activities (*e.g.*, timber sales). The Administration has offered a proposal, and four bills have been introduced to alter the current payment system. These options raise numerous issues about the compensation of counties for the tax-exempt status of federal lands. Six issues are discussed:

Basis for Compensation. The legislative history of the 1908 Act requiring the FS payments clearly indicates that the intent was to substitute revenue-sharing for taxation, but no rationale was discussed for the level chosen — 25%. In 1984, tax equivalency was suggested, but most proposals to change the system have suggested using historic payments as the basis for future payments. None have described the rationale for the proposed compensation level.

Duration of Proposed Changes. Some of the proposals would permanently change the payment program. Others would change the system temporarily, with an advisory group of federal agency heads and local beneficiaries to examine the temporary changes and recommend permanent changes.

Geographic Basis. Most of the proposals would base additional FS payments on historic payments at the state level. Current payments, however, are based on revenues at each forest, with state allocations to the counties based on forest acreage in each county. In states with multiple forests, the additional state-level payments would require a different allocation mechanism, necessarily enacted by the states.

Authorized and Required Uses of the Payments. Two bills would require counties receiving more than $100,000 to "reinvest" 20–25% of the payments in projects on FS and BLM lands. Counties would propose projects recommended by a local advisory group, and the agency would approve and implement projects. This could reduce funds for roads and schools in some areas, while again "linking" county benefits with revenue-generating activities.

Source of Funds. Most proposals would permanently appropriate the added payments, although most do not specify the source of funds. One bill would require payments to be made first from revenues and then from agency appropriations for non-revenue-generating activities. Another would require annual appropriations.

Interaction With Other Payment Programs. Most counties are also paid for the tax-exempt federal lands under the Payments in Lieu of Taxes (PILT) program. PILT payments are generally reduced by other federal land payments, and thus might be reduced by additional payments under these proposals.

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Forest Service Revenue-Sharing Payments: Legislative Issues

Congress has enacted various programs to compensate local governments for the tax exempt status of federal lands. For the national forests administered by the Forest Service (FS, U.S. Department of Agriculture) and for the Oregon and California (O&C) grant lands[1] managed by the Bureau of Land Management (BLM, U.S. Department of the Interior), Congress has directed that a portion of revenues be shared with the local governments where the lands are located. The majority of revenues has historically been from timber sales, but timber sale levels have fallen substantially in the past decade. The revenue-sharing payments have thus also fallen substantially, causing fiscal difficulties in many local areas. The Administration has proposed to change the compensation system, and various bills have been introduced to change the system in various ways. This report describes the current complicated system of compensation, and explores how this system would be affected by provisions in the various proposals.

Background

USDA Forest Service

Since 1908, the Forest Service (FS) has shared 25% of its revenues from the sale, lease, rental, or other use of each national forest with the states for use on roads and schools in the counties where the national forests are located.[2] While this revenue-sharing was clearly enacted to compensate local governments for the tax-exempt national forests, the rationale for the compensation rate chosen (25%) was not discussed in the congressional floor debate over the measure. This program is called FS Payments to States, because the states receive the payment and then allocate the funds to road and school programs. (Each state directs by state law the allocation between road and school programs.) However, the FS determines each county's

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[1] The O&C lands are 2.6 million acres of heavily-timbered lands in western Oregon. They were originally granted to the Oregon and California railroad company, but were returned to federal ownership because the firm violated the terms of the original grant. References to the "O&C lands" often include the 75,000 acres of Coos Bay Wagon Road (CBWR) lands, granted to the company for building a wagon road, but also returned to federal ownership because the firm violated the terms of the grant.

[2] Department of Agriculture Appropriations Act for FY1909. Act of May 23, 1908; ch. 192, 35 Stat. 251; 6th unnumbered paragraph under "Forest Service." The Weeks Law (Act of March 1, 1911; ch. 186, 36 Stat. 961) contains an identical provision providing for 25% payments from lands acquired under its authority.

payment based on national forest acreage in each county.[3] The 25% payments are permanently appropriated from the National Forest Fund (an account used to collect revenues).

Congress has twice expanded the revenue base subject to sharing. Originally, the agency paid 25% of stumpage (timber) fees, grazing fees, and other user charges. In the 1970s, the counties argued that FS decisions to allocate timber receipts to the Knutson-Vandenberg (K-V) Fund (primarily for reforestation) and to finance road construction with purchaser credits were discretionary, and were unfairly reducing the receipt-sharing payments for the counties.[4] Congress apparently agreed, and included §16 of the National Forest Management Act of 1976 (NFMA; P.L. 94-588, 90 Stat. 2949) defining "gross receipts" to include K-V Fund deposits and purchaser credits. Then, in the Continuing Resolution for FY1988 (P.L. 100-202, 101 Stat. 1329), Congress directed that deposits to the Salvage Sale Fund also be counted for receipt-sharing,[5] because salvaging timber following large forest fires in northern California and southern Oregon would have eliminated the payments in these areas for a year or more. Similar salvage receipt-sharing provisions were contained in the subsequent annual appropriations acts, until it was permanently enacted in the Interior Appropriations Act for FY1993 (P.L. 102-381, 106 Stat. 1374).

The FS has four other compensation programs. The largest is the Payments to Counties for National Grasslands, which provides 25% of net (rather than gross) receipts for roads and schools directly to the counties where the grasslands are located. In 1948, Congress enacted an additional payment for three counties in northern Minnesota of $^3/_4$ of 1% of the appraised value of the land, without restrictions on how to use the money (ch. 593, 62 Stat. 570). In 1988, Congress established the Quinault Special Management Area, and directed the FS to share 45% of timber sale receipts with the Quinault Indian Tribe and 45% with the State of Washington — 90% in total, with 10% to cover agency timber sale costs (P.L. 100-638, 102 Stat. 3327). Also in 1988, Congress directed the FS to sell quartz from the Ouachita National Forest as common variety of mineral materials (rather than being available for modest fees under the 1872 General Mining Law), with 50% of the receipts to the State of Arkansas for roads and schools in the counties with Ouachita N.F. lands (§423, Interior Appropriations Act for FY1989; P.L. 100-446, 102 Stat. 1774).

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[3] The authorizing language is somewhat ambiguous: "when any national forest is in more than one State or Territory or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein." An analysis of the state laws that allocate the funds shows that all employ the same approach, basing at least the initial allocation on national forest acres in the county or school district. (A few direct a further allocation of school funds to school districts within a county based on student populations.) See CRS congressional distribution memorandum, *Forest Service Revenue-Sharing Payments: Distribution System*, by Ross W. Gorte, Nov. 19, 1999.

[4] These programs are described more fully in CRS Report 97-14 ENR, *The Forest Service Budget: Trust Funds and Special Accounts*, at pp. 29-31 and 40-41, respectively.

[5] As authorized in NFMA in 1976, Salvage Fund deposits were not included as receipts for such payments.

In 1993, President Clinton proposed a 10-year program to address regional economic problems resulting from efforts to protect northern spotted owls and other values that had reduced federal timber harvests in parts of California, Oregon, and Washington.[6] Congress enacted this program in §13982 of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66, 107 Stat. 681). These "spotted owl" payments began in 1994 at 85% of average FY1986–FY1990 payments, declining by 3 percentage points annually, to 58% in FY2003; from FY1999–FY2003, however, the payment is the higher of either this formula or the standard 25% payment. These payments apply to the 17 national forests that contain northern spotted owl habitat. (There are 120 national forests in total.)

Bureau of Land Management

The Bureau of Land Management (BLM) has many programs that compensate states and counties for the tax exempt status of the public lands that the BLM administers. The compensation depends on the source of revenues (land sales, timber sales, grazing leases or permits, mineral leases, *etc.*) and on the history of the lands (public domain lands, acquired lands, lands within grazing districts, *etc.*) A list of these compensation provisions is contained in the BLM's annual report, *Public Land Statistics,* and requires several pages to enumerate.[7]

Most BLM compensation programs are viewed as completely independent of the FS program, but one program is quite similar and is typically included when the FS program is addressed. This program is compensation to counties which contain the Oregon and California (O&C) grant lands and the Coos Bay Wagon Road (CBWR) grant lands. The 1937 O&C Act directs that the counties receive 50% of revenues, most of which have been from timber sales.[8] The 1939 CBWR Act directs that the counties could receive up to 75% of the revenues, but not more than the taxes that would be paid by a private landowner.[9] In contrast to the FS payments (which can

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[6] See CRS Report 93-664 ENR, *The Clinton Administration's Forest Plan for the Pacific Northwest.*

[7] See, for example, U.S. Dept. of the Interior, Bureau of Land Management, "Table 3-31. Legal Allocation of Bureau of Land Management Receipts for Fiscal Year 1998," *Public Land Statistics, 1998*, vol. 183 (Washington, DC: U.S. Govt. Print. Off., March 1999), pp. 148-158.

[8] Act of August 28, 1937, ch. 876; 43 U.S.C. §1181f. The Act authorizes another 25% to be paid to the O&C counties, initially to repay back taxes due on the land and subsequently after "reimbursable charges against the Oregon and California land-grant fund ...." In practice, the reimbursable charges include the annual appropriations for O&C management, which have consistently exceeded 25% of revenues, and thus none of this additional 25% has been paid to the counties since the back taxes were paid nearly 50 years ago.

[9] Act of May 24, 1939, ch. 144; 43 U.S.C. §1181f-1. The private land tax limitation has constrained the payments substantially (generally to less than 25% of revenues).

only be used for roads and schools), the O&C and CBWR payments can be used for any local governmental purpose.[10]

The O&C lands were included in the spotted owl payments program enacted in 1993 for the national forests (and described above). While the program encompassed only some national forests, it included all O&C lands because the O&C lands are all within the historic range of northern spotted owls. Thus, since 1994, these owl payments have entirely supplanted the standard O&C payments.

For the remainder of this report, the FS 25% revenue-sharing payments and the BLM 50% revenue-sharing payments for the O&C lands are, in aggregate, referred to as the "standard revenue-sharing payments."

Concerns and Responses

The immediate concern that has led to the current legislative debate is the substantial decline in FS and BLM revenues — largely from timber sales — and the resulting decline in revenue-sharing payments. FY1998 national forest revenues (subject to sharing) were $557 million, only 36% of the FY1989 peak revenues of $1.531 billion. In some areas, the decline has been even greater. The eastern Oregon counties that contain the Ochoco National Forest have seen the largest decline, with FY1998 payments of $309,000, down from FY1991 payments of more than $10 million — a 97% decline. However, it should be recognized that not all areas have faced declines. Some national forests — 20 forests in total, including 8 forests in Region 9 (the northeast and Great Lake states)[11] — had their highest receipts (and hence highest payments) in FY1998.

Another concern has been the annual fluctuations in the payments. Even in areas where the declines have been smaller, the payments have varied widely from year to year. The payments from each national forest have risen or fallen an *average* of nearly 30% *annually* since FY1985 — that is, on average, a county's payment in any particular year is nearly 30% higher or lower than its payment in the preceding year.[12] Such wide annual fluctuations impose serious budgeting difficulties on the counties.

The longer-term concern is referred to as "linkage." Some observers have noted that, because the counties receive a share of revenues, they are rewarded for advocating revenue-generating activities (principally timber sales) and for opposing

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[10] Hereafter, references to the "O&C lands" include the CBWR lands unless otherwise specified.

[11] The 20 national forests are: Angeles NF (CA); Arapaho NF (CO); Caribou NF (UT); Chequamegon NF (WI); Chippewa NF (MN); Deerlodge NF (MT); Fishlake NF (UT); Grand Mesa NF (CO); Green Mountain NF (VT); Helena NF (MT); Lewis & Clark NF (MT); Manti-La Sal NF (UT); Medicine Bow NF (WY); Monongahela NF (WV); Nicolet NF (WI); Ottawa NF (MI); Ozark NF (AR); Sabine NF (TX); Superior NF (MN); and White Mountain NF (NH).

[12] CRS calculations using Forest Service data.

management that reduces or constrains such activities (*e.g.*, protecting commercial or sport fish harvests or designating wilderness areas). Thus, counties have often allied themselves with the timber industry, and opposed environmental groups, in debates over FS management and budget decisions.

Others defend linking county payments with agency revenues. This source of funds was deemed appropriate for compensation when the programs were created (albeit, prior to the creation of federal income taxes), and identifying other relevant funding sources is difficult and controversial. Local support for revenue-generating activities is also seen as appropriate, because such activities also provide local employment and income, especially in rural areas where unemployment is generally higher and where alternative job opportunities can be relatively rare. Finally, some argue that local government support for timber sales is necessary to improve forest health, since timber sales can be used for such purposes.[13]

One proposal to change the compensation system came in the FY1985 FS budget request.[14] Assistant Agriculture Secretary John Crowell proposed "tax equivalency" (compensation equivalent to local taxation), with a floor to guarantee payments, to replace revenue-sharing. The counties argued that the proposal was intended to reduce the payments, because the budget request included $40.5 million (12.5%) in savings from the change. The FY1986 FS budget request proposed changing the payments to sharing 25% of *net* revenues (after deducting agency administrative costs), thereby saving $207.4 million (87.4%). However, legislation to effect these changes was not offered.

In the FY1999 FS budget request, the Administration announced that it would propose legislation "to stabilize the payments" by extending the formula for the spotted owl payments to all national forests.[15] The proposal would have directed annual payments at the higher of: (a) the FY1997 payment or (b) 76% of the average payments for FY1986–FY1990, to be made from "any funds in the Treasury not otherwise appropriated." This proposal was title VI of the proposed Agricultural Reform and Improvement Act, offered by the Administration on April 2, 1998, with the additional payments offset by savings in other USDA programs; however, no Member introduced the Administration's proposed bill. The FY2000 and FY2001 requests have announced similar programs, but no legislative proposal (and no source of funds) has been offered. The Administration's approach would increase payments in the areas with the largest declines in recent years, but decrease payments in other areas, would eliminate annual fluctuations in the payments, and would de-link county payments from agency revenues.

[13] For a discussion of forest health issues, see CRS Reports 95-548 ENR, *Forest Health: Overview*, and 95-364 ENR, *Salvage Timber Sales and Forest Health.*

[14] This would have applied only to the national forests, and not to the O&C lands.

[15] This would have been limited to the national forests, because the spotted owl formula already applied to the O&C lands.

The National Association of Counties (NACo) proposed an alternative.[16] The NACo proposal would provide the counties with the higher of: (a) the standard revenue-sharing payment,[17] or (b) a "replacement" payment, based on the average of the three highest consecutive annual payments for FY1986–FY1995, indexed for inflation. NACo also proposed seeking "a long term solution ... to allow for the appropriate, sustainable, and environmentally sensitive removal of timber from the National Forests" by establishing local advisory councils to make recommendations on land management and on county compensation. The NACo approach would increase payments in most areas and would reduce annual payment fluctuations, but would retain the linkage between county payments and agency revenues.

Several bills have been introduced in the 106th Congress to alter FS and O&C revenue-sharing payments, as described briefly below. The bills are generally based on the Administration and/or NACo proposals, with various modifications Some would establish a new payment program to supplant the current systems; others would add a program to supplement the standard revenue-sharing payments. In this report, "new payments" and "additional payments" are used interchangeably when either (or both) types of programs are referred to.

H.R. 1185 (DeFazio). The Timber-Dependent County Stabilization Act of 1999. The bill would establish a special payment for FY2000–FY2004 for each state (for national forest land) and O&C county of 76% of the average of the three highest payments for FY1986–FY1995, indexed for inflation. For FY2005 and thereafter (*i.e.*, a one-time choice for all subsequent years), each state or O&C county would choose either the special payment or the standard revenue-sharing. Payments would be permanently appropriated, but no source of funds is identified, so the moneys would probably come from the General Fund of the Treasury. That program would raise payments in the areas with the largest declines (although temporarily reducing payments in some other areas), would eliminate variation in payments in many areas, and would de-link county payments and agency revenues in the areas opting for the new payment system.

H.R. 2389 (Deal, *et al.*). The County Schools Funding Revitalization Act of 1999. As introduced, the bill would establish a full payment for FY2000–FY2005 for each state and O&C county of 100% of the average of the three highest payments for FY1985–FY1998, indexed for inflation. States and O&C counties could choose the standard revenue-sharing. Payments would be permanently appropriated and would be made from agency revenues or from funds appropriated to the agency (essentially, reprogramming agency funds), but not from funds for programs which generate revenues or funds in trust or special funds. The bill would also establish a national advisory group — the Forest Counties Payments Committee, composed of three Administration officials, two local elected officials, and two school officials — to make recommendations to maximize payments from revenues and to ensure sustainable forest management.

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[16] Personal communication with Jeff Arnold, National Association of Counties. *NACo RESOLUTION in Support of a Forest Counties "Safety Net,"* Washington, DC: Apr. 21, 1999.

[17] This would apply to the O&C lands as well as to the national forests.

The bill was reported by the House Agriculture Committee on October 18, 1999, and discharged by the House Resources Committee on October 29. The bill passed the House, amended, by 274-153 on November 3. The amendment extended the base "eligibility" period to FY1984–FY1999, and specified that FS payments be allocated among the counties based on the average payments over this period. However, the payments would require annual appropriations. The amendment would also require counties with more than $100,000 in payments to allocate 20% of the payment to resource management projects on the national forests or O&C lands. The counties would propose projects, which would first be recommended by local advisory committees, have any necessary environmental reviews completed, and be approved by the federal agency. This bill would temporarily increase payments in most areas, and would substantially reduce annual fluctuations. For the counties choosing the new system, it would temporarily eliminate the direct link between county payments and agency revenues (although those interested in protecting the Treasury would still have an incentive to maximize revenues), but would establish a new link between county payments and federal land management.

H.R. 2868 (DeFazio, *et al.*). The bill would establish a guaranteed payment, beginning in FY2000, for each state and O&C county of 100% (indexed for inflation) of either: (a) the average of the three highest payments for FY1986– FY1996, or (b) the FY1998 payment. The payments would be permanently appropriated from "any money in the Treasury not otherwise appropriated...." This bill would increase payments in most areas, would substantially reduce the annual fluctuations, and would de-link county payments and agency revenues.

S. 1608 (Wyden, *et al.*). The Secure Rural Schools and Community Self-Determination Act of 1999. The bill would establish a full payment, permanently, for each state or O&C county of 100% of the average of the three highest payments for FY1986–FY1999 (or FY2000, if the bill were enacted after September 30, 2000), indexed for inflation. States and O&C counties could choose the standard revenue-sharing instead of this new full payment. Payments would be permanently appropriated first from agency revenues (except deposits to trust funds) "and/or secondly, as determined by the Secretary of the Treasury, from any funds in the Treasury not otherwise appropriated."[18] The bill would require 25% of the payments to be spent on resource investments on the national forests or O&C lands, with the investments nominated and paid for by the county, recommended by the local investment project advisory committee, in compliance with applicable resource management plans and environmental laws, and approved by the appropriate Secretary. This bill would temporarily increase payments in most areas, and would substantially reduce annual fluctuations. It would eliminate the direct link between county payments and agency revenues for counties which chose the new payment system, but would establish a new link between county payments and federal land management.

[18] Ambiguities over this language is discussed later in this report.

Legislative Issues

The Administration's proposal and the several bills raise numerous questions about altering the current program. There is one very basic issue to address first: the appropriate basis for compensation. Other questions and issues derive from the nature of the legislation, and are discussed below generally in the order in which they are addressed in H.R. 2389 (the most comprehensive of the bills): the duration of the change; the geographic payment basis and allocation; authorized/required use of the payments; the source of the additional funds; and the interaction with other payment programs.

Basis for Compensation

The first provision directing revenue-sharing payments was enacted in 1906 in the Agriculture Appropriations Act of FY1907,[19] and was retained in 1907 (in the FY1908 Agriculture Appropriations Act). This 10% payment was offered as a floor amendment by Senator Charles Fulton of Oregon, who stated, "It is simply in lieu of taxes."[20] In 1908 (in the Agriculture Appropriations Act for FY1909), the provision was expanded and permanently enacted. Because the provision was enacted from a Senate floor amendment in all three years, there was no discussion in the House or Senate committee reports on the bills or on the House floor. In the 1908 discussion, Senator Francis Newlands of Nevada stated:

> The question before the Senate now, however, is ... whether these vast areas in individual States shall be kept entirely free from taxation as the property of the National Government, or whether the National Government, recognizing the obligation[s] of the State [sic] ... , should be aided by the National Government in that work,[21] either by a subjection of the lands themselves to local taxation, or by a surrender to the State and to the municipalities for public purposes of a certain proportion of the revenues derived from these lands ...
> ... So it is a simple question as to whether that amount [10%] should be increased; whether 10 per cent of the gross revenue is sufficient to compensate the States for the loss of the taxation which they would be enabled to levy if these lands were in private ownership.... No one would certainly object, it seems to me, to that [25%] as a fair proportion in lieu of taxation.

Clearly, the intent of Congress, more than 90 years ago, was to compensate the counties for the tax exempt status of the national forests. The approach chosen was to share agency revenues with the states for use on roads and schools. The level of sharing was debated, with most discussion focusing on 10% and 25%,[22] although

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[19] Act of June 30, 1906, ch. 3913, 34 Stat. 669; 4th unnumbered paragraph under "Forest Service."

[20] 40 *Congressional Record* (May 24, 1906): p.55.

[21] So in the original. Probably should be "should aid the State Governments in that work ...."

[22] The 1906 Act set the payment at 10%, according to Senator George Perkins of California, (continued...)

Congressman Charles Reid of Arkansas suggested that 90% was appropriate (that 10% was sufficient to cover agency administrative costs).[23] While there was some discussion of whether 10% or 25% (or more) best approximated private land taxation, there was no evidence presented.

As noted above, Assistant Agriculture Secretary John Crowell in 1984 suggested tax equivalency to replace the 25% revenue-sharing. The FS undertook a study of tax equivalency, although the report was not completed until more than a year after the tax equivalency proposal was offered. The FS study compared the 25% payments plus PILT payments (described and discussed later in this report) with estimated private landowner taxes for five counties in each of eight states. The findings were that, in the early 1980s, the federal payments were substantially greater than private land taxes in Louisiana, California, Oregon, and Washington, but were substantially less than private land taxes in Michigan. Federal payments and private land taxes were indistinguishable in Colorado, and were higher than private land taxes in some Idaho and Georgia counties, but lower in others. It is unclear whether these findings would still hold true now, more than 15 years later.

None of the recent proposals have employed tax equivalency. Rather, they all follow the general approach used for the "spotted owl" payments — basing current payments on historic payments, rather than on current revenues. The owl payments and each of the proposals differ in the details of the historic period used. The owl payments were set at 85% of the FY1986–FY1990 average for FY1994, and decline by three percentage points annually, to 58% in FY2003. For its FY1999 budget request, the Administration chose the FY1997 owl payment level — 76% of the FY1986–FY1990 average — but with an option to select the FY1997 standard payment instead. The National Association of Counties proposed 100% of the three highest payments for FY1986–FY1995. H.R. 1185 combined these, using 76% of the three highest payments for FY1986–FY1995. H.R. 2389, H.R. 2868, and S. 1608 propose 100% of the three highest payments. As introduced, all use FY1986–current fiscal year as the base period, but H.R. 2389 was modified on the House floor to begin the base period with FY1984. Except for the Administration's, all the proposals would index the payments for inflation.

The rationale for using a fixed historic period is not obvious, except that it was expedient for increasing payments in the area affected by efforts to protect spotted owls and other values when the Administration composed its forest plan for the Pacific Northwest in 1993. An argument could be made that averaging the three highest payments would compensate the counties at a level which they had come to expect, but whether that level is justified by the local costs imposed by federal land ownership or by local taxes lost due to federal land tax exemption is unclear and has not been examined within the past 15 years.

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[22] (...continued)
to avoid a point of order being raised against the provision. A point of order was raised against the 25% payment in 1908 by Senator Augustus Bacon of Georgia, but was withdrawn when Senators Knute Nelson of Minnesota and Francis Warren of Wyoming argued that the 25% payment was an expansion of existing law, not new general legislation.

[23] 42 *Congressional Record* (March 24, 1908): p. 3834.

Also, the rationale for any particular base period is unclear. While FS revenues for sharing peaked at $1.53 billion in FY1989, they had previously peaked at $1.16 billion in FY1979. It is certainly possible that peak payments for some counties occurred in the late 1970s, even without adjusting for inflation.

Finally, nearly all the proposals include an inflation adjustment. Inflation has been relatively low since the early 1980s, but low inflation is not guaranteed, and even low inflation rates erode the purchasing power of a fixed payment over long periods. (At 3% annual inflation, purchasing power falls by half in 24 years.) The inflation adjustment may be of little consequence for temporary proposals (NACo, and H.R. 2389), if inflation remains relatively low. It would be of more importance for permanent changes (the Administration, H.R. 1185, H.R. 2868, and S. 1608).

Duration of Proposed Change

As noted above, four of the proposals would enact permanent changes in the revenue-sharing payments. One (H.R. 1185) would create alternative payments for five years, then provide local governments with a one-time choice between standard revenue-sharing and this alternative. The other three proposals would simply change the system, although H.R. 2868 would authorize the FY1998 payment as an option and the other three bills would authorize the standard revenue-sharing as an option.

NACo and H.R. 2389 propose temporary changes in the payments; H.R. 2389 would only change the payments for FY2000–FY2005. To identify a long-term solution, NACo proposed local advisory committees, composed predominately of local government and school officials, to examine alternative payment options for compensating local governments while assuring "sustainable and environmentally sensitive" timber harvesting.

H.R. 2389 is the only bill to propose a national-level advisory committee.[24] The Forest Counties Payment Committee, composed of the Chief of the Forest Service, the Directors of the BLM and OMB (Office of Management and Budget), two local elected officials, and two local school representatives, with an appointed staff and agency assistance. The four local members are to be appointed by the President pro tempore of the Senate and the Speaker of the House to achieve geographic diversity. The committee is to evaluate the temporary payment program and local advisory committees established by the bill and to develop recommendations "to provide a long-term method to generate annual payments ... at or above the full payment amount." The committee is to present its final report to Congress within 18 months of its creation.

This advisory committee structure and the specifications have raised questions. First, concerns have been expressed over how the committee could fulfill the requirement to analyze the temporary program, since the final report must be presented within six months of the first of the six annual payments established by the

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[24] The bill also proposes local advisory committees for county reinvestment in the federal lands; these local committees are discussed briefly later in this report.

bill. Similar concerns have been raised as to why the recommendations must be "at or above" the temporary payments established by the bill. In addition, some critics assert that the payments have significantly affected federal land management by establishing relationships among interest groups (notably, an alliance between counties and the timber industry). Some object to a payment advisory committee dominated by the beneficiaries of those payments, arguing that such a committee is akin to "the fox guarding the henhouse," with insufficient consideration of the consequences of the recommended payment method and level for taxpayers, ecosystems, federal land and resource users, tribal interests, and others.

However, given the current lack of information on the local costs imposed by federal land ownership or by local taxes lost due to federal land tax exemption, some observers have espoused a temporary program with a study of appropriate compensation. Two alternatives suggested are: a study by a broadly representative advisory group; and a study by an independent, non-partisan organization with sufficient expertise to assess both local and federal fiscal ramifications, as well as the land management consequences, of the various options, such as the General Accounting Office or the National Academy of Sciences.

Geographic Basis

The geographic basis proposed for averaging the three high FS payments can affect the amount of the additional payments and their allocation to the counties. Initial proposals did not clearly specify the geographic basis, leading to uncertainty about whether the averaging would be the three high payments from each national forest, to each state, or to each county (as allocated by the state).

Currently, the geographic basis is the same in all four bills — the three highest payments to each state for the national forests and to each county for the O&C lands. For the O&C lands, this is reasonably straightforward. The standard O&C payments are currently allocated to the counties based on the 1915 assessed value of the lands, and thus the amount allocated only changes when lands are acquired or disposed and when revenues rise or fall. Thus, the three highest payments occur in the same year for each county and for all O&C lands.

For the national forests, the years with the three highest payments vary widely, and some interests have suggested that the bills should use the county or national forest level, instead of the state level. Determining the three highest payments can be complicated, because most national forests have land in more than one county, and many have land in more than one state. In addition, most states and many counties contain federal land in more than one national forest. This complicates matters, because as noted above, FS payments are made to the states for use on the roads and schools in the counties where each national forest is located. The state then makes payments, in accordance with state and federal law, to counties or county subdivisions for road and school programs.

The above process can be illustrated by the example of Arizona, whose 11,251,701 acres of National Forest System land are contained in 7 national forests located in 13 counties. Two of these forests (Apache NF and Coronado NF) also have lesser amounts of land in New Mexico. The Coronado NF has land in 5 Arizona counties, and the Tonto NF has land in 4 counties. The Coconino NF, Kaibab NF, and Sitgreaves NF have land in 3 counties, while the Apache NF and the Prescott NF have land in 2 Arizona counties. Looked at the other way, 8 counties contain land of only one national forest, 3 counties contain land of two national forests, and 2 counties (Coconino Co. and Yavapai Co.) contain land of four national forests.

The three highest payments to the State of Arizona were in FY1987, FY1988, and FY1989, and the average of these three is $7,230,766. The years of the three highest payments to each county varied, however, depending on the payments from each of the national forests it contains. Table 1 shows the three highest payment years for each Arizona county, together with the average of those three payments. This table demonstrates the variability among the years in which the three highest county payments occur. More importantly, however, is that the total of these three highest payments to the counties is $7,601,153 — $370,387 (5%) higher than the three highest payments to the State of Arizona.

As implied by table 1, the three years with the highest payments from the national forests in Arizona varied. Table 2 shows the three highest payment years for each national forest in Arizona, together with the average of those three payments.

Table 1. Forest Service Payments Allocated to Arizona Counties: the Three Highest Fiscal Years & the Average of The Three Payments

County	Highest Year	2nd Highest	3rd Highest	Average Payment
Apache	FY1989	FY1988	FY1992	$ 499,823.39
Cochise	FY1993	FY1989	FY1991	$ 68,005.41
Coconino	FY1988	FY1987	FY1989	$ 3,956,972.64
Gila	FY1994	FY1995	FY1990	$ 325,457.53
Graham	FY1993	FY1989	FY1991	$ 55,013.95
Greenlee	FY1989	FY1988	FY1992	$ 733,130.33
Maricopa	FY1994	FY1995	FY1990	$ 124,967.51
Mohave	FY1986	FY1988	FY1987	$ 5,670.07
Navajo	FY1993	FY1988	FY1984	$ 868,346.13
Pima	FY1993	FY1992	FY1994	$ 53,947.56
Pinal	FY1994	FY1995	FY1990	$ 40,941.26
Santa Cruz	FY1993	FY1989	FY1991	$ 58,243.93
Yavapai	FY1989	FY1987	FY1988	$ 810,633.42

This table shows the variability among the years in which the three highest payments occur from each national forest. Of the 15 years (FY1984–FY1998), only three years (FY1985, FY1996, and FY1998) did not provide one of the three highest payments from at least one national forest. More importantly, however, is that the total of these three highest payments from the national forests is $7,940,390 — $339,237 (4%) higher than the total of the three highest payments to the counties, and $709,624 (10%) higher than the three highest payments to the state.

Table 2 clearly indicates that using the national forest as the geographic basis for the three highest payments will result in the highest total payments, while using the state as the geographic basis will result in the lowest total. (Using the counties will yield an intermediate total.) While this general relationship among the geographic bases (*i.e.*, national forest level greater than county level, which is greater than state level) will remain, the quantitative relationship is unclear. An earlier analysis, using a slightly different temporal scale (FY1985–FY1998), estimated that, nationwide, the three highest years at the national forest level would yield 34% higher payments than would the three highest years at the state level.[25]

Table 2. Payments to the State From Each National Forest in Arizona: the Three Highest Fiscal Years & the Average of The Three Payments

National Forest	Highest Year	2nd Highest	3rd Highest	Average Payment
Apache	FY1989	FY1988	FY1992	$ 1,165,215.77
Coconino	FY1987	FY1989	FY1988	$ 2,744,170.94
Coronado	FY1993	FY1992	FY1991	$ 237,744.39
Kaibab	FY1986	FY1988	FY1987	$ 1,614,288.67
Prescott	FY1997	FY1989	FY1994	$ 177,548.06
Sitgreaves	FY1993	FY1988	FY1984	$ 1,455,428.51
Tonto	FY1994	FY1995	FY1990	$ 545,993.76

The choice of geographic basis would also affect the states' allocations of the payments among the counties. Because current state law allocates the payments to the states based on each national forest's acreage in each county, legislation basing additional payments on historic payments from each national forest or allocated to each county could rely on current state law to allocate the additional payments in the same manner as the historic payments.

Additional payments based on historic payments at the state level, however, could not be allocated to counties in the same manner as the historic payments.

[25] CRS Congressional Distribution Memo, *The "County Schools and Services Funding Revitalization Act of 1999,"* by Ross W. Gorte (August 5, 1999), 18 pp.

Historic payments are the sum of payments from each national forest, allocated to each county based on the acreage of each forest in each county. Additional payments based on national forest or county level payments can use the historic allocation, because they retain the connection to county allocation (*i.e.*, each national forest's land in each county). Additional payments based on the state level payments would lose this forest-county connection, and thus could not use the historic allocation mechanism. Thus, for state-level payments, some allocation mechanism would have to be chosen, either in the federal law making the additional payments or in each state's law governing the allocation.

If the federal law did not specify the allocation, and states did not modify their own laws, then the allocation would probably follow the provisions of the 1908 Act as closely as possible. The FS payment to the state would be the federally-enacted additional payments, but the allocation to counties (each county's share of the additional payments in, for example, FY2004) would probably be based on each county's share of then-current (FY2004) revenues in each national forest. Under this approach, current FS revenues and county payments (in states with more than one national forest) would still be linked — the state's payment would be set by the new federal law and not be affected by current revenues, but the county share would be determined by current revenues (*i.e.*, a county could get a larger share if it could persuade "its" national forest to increase revenues by more than the other national forests in the state). In addition, although the state's payment would be stable, this allocation scheme might retain the significant annual fluctuations of the current system.

Several other ways could be chosen to allocate additional state-level payments among the counties. The county allocation could, for example, be specified as the allocation of the state payments in the three highest years. However, in the Arizona example discussed above, the three highest years for the state — FY1987–FY1989 — were the three highest years only for the Coconino NF and for Coconino and Yavapai Counties. Alternatively, the average of the three highest payments to each county (shown in the last column of table 1) could be the basis for the allocation. Another possibility, included in H.R. 2389 as passed by the House, could be to base the allocation on the average payments over the past 15 years (FY1984–FY1998). Table 3 contrasts these three options for the counties in Arizona.

These apparently modest differences can have significant effects. For example, the payments to Gila and Pinal counties under the FY1984–FY1998 average would be 66% higher than the payments under the FY1987–FY1989 average,[26] although in either case, the payments are likely to be higher than they have been in the past few years.[27] There is no obvious "correct" allocation method, and debates over allocation

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[26] This is the ratio of the two payment shares — 4.651% / 2.808% (= 1.66 or 66% more) for Gila County, and 0.593% / 0.356% (= 1.66 or 66% more) for Pinal County.

[27] This will not be true for all national forests, particularly where (a) recent payments have been at or near their peak, (b) there are two or more national forests, and (c) the historic payments have risen faster on one forest than on the other. The Nicolet and Chequamegon National Forests in Wisconsin provide an example. FY1996-FY1998 are the three highest (continued...)

Table 3. County Shares Under Different Alternatives for Allocating National Forest Payments to Arizona

County	Average of FY1987-FY1989 (State 3 Highest)	Average of 3 Highest in Each County	15 Year Average: FY1984-FY1998
Apache	6.868%	6.576%	6.006%
Cochise	0.781%	0.895%	1.179%
Coconino	54.724%	52.058%	52.576%
Gila	2.808%	4.282%	4.651%
Graham	0.632%	0.724%	0.954%
Greenlee	10.063%	9.645%	8.573%
Maricopa	1.061%	1.644%	1.776%
Mohave	0.070%	0.075%	0.073%
Navajo	10.172%	11.424%	10.193%
Pima	0.584%	0.710%	0.922%
Pinal	0.356%	0.539%	0.593%
Santa Cruz	0.669%	0.766%	1.009%
Yavapai	11.211%	10.665%	11.493%

methods are likely to raise inter-county arguments. An allocation method could be specified in legislation (as in §102(c)(1) of H.R. 2389), or the choice could be left to the states.

All of the bills that have been introduced have based the new or additional payments for the national forests on the three highest payments to the states. This would lead to lower payments than other geographic bases, but would lead to the allocation problems described above. Only H.R. 2389 has specified an allocation method — the 15-year (FY1984–FY1998) average. Additional payments based on historic payments from each national forest would result in the highest payments, would most closely follow the pattern established in the 1908 Act, and would avoid

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[27] (...continued)
payments for both forests, and therefore also for the state. The three high average for the Chequamegon is $1,094,484, and for the Nicolet is $788,273 — a 58% allocation to the Chequamegon counties and a 42% allocation to the Nicolet counties. The 15-year average (FY1984–FY1998) for the Chequamegon is $478,543, and for the Nicolet is $556,401 — a 46% allocation to the Chequamegon counties and a 54% allocation to the Nicolet counties. Since the three high payments for the state are FY1996-FY1998, any allocation based on other than those three years will reduce payments to the Chequamegon counties and raise payments (which are already at their highest ever) to the Nicolet counties. It is unclear, and difficult to analyze, where else this situation might arise.

the allocation problem. Payments based on historic payments allocated to each county would be intermediate in the total additional payment, and would be more complicated than those based on historic payments from each national forest, but would also avoid the allocation issue. Some observers have suggested that the bills should be changed to a different geographic basis.

Authorized/Required Use of the Payments

As noted above, the FS payments currently can be used only on roads and schools in the counties where the national forests are located, although state law determines which road and school programs are funded and at what level.[28] Two of the bills, H.R. 1185 and H.R. 2868, would continue this direction for use of the payments.

The other two bills, H.R. 2389 and S. 1608, both of which are pending in the Senate, would alter the historic direction for using the payments. Title II of both bills would require, for counties receiving more than $100,000 in annual payments, a portion of the payment — 20% under H.R. 2389 and 25% under S. 1608 — to be "reinvested" in the national forests or O&C lands by the counties. Neither bill would establish requirements or limitations on the types of projects funded, but both contain a process for determining the projects to be proposed and funded — projects would be proposed by the counties, after being recommended by local advisory committees (established in other sections of the bills), and approved by the appropriate federal agency. Issues raised by these bills among policymakers include: the rationale for county funding of federal land investments; the authorities and responsibilities of the counties and of the federal agencies; and the fiscal questions of what to do with unspent money and with revenues from reinvestment projects.

Rationale for County Reinvestment. Two reasons have been offered for directing a share of the payments into investments on the federal lands. One is the need for additional funding (beyond annual appropriations) primarily to improve forest health and reduce the risks of catastrophic wildfire in the wildland–urban interface.[29] Many observers argue that new and innovative financing mechanisms are needed to address these problems, although others argue that the risks are overstated and that the costs of such activities exceed the benefits.[30]

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[28] As noted earlier, state laws govern the allocation between roads and schools, and vary widely, ranging from 75% to roads/25% to schools (in Oklahoma and Oregon) to 100% to schools/0% to roads (in Vermont). In addition, several state laws do not specify the road–school allocation, either explicitly or implicitly leaving the allocation decision to the counties. See CRS congressional distribution memorandum, *Forest Service Revenue-Sharing Payments: Distribution System*, by Ross W. Gorte, Nov. 19, 1999.

[29] The wildland–urban interface is the zone where housing developments, typically of low density and often of expensive homes, occur in or near undeveloped forestland.

[30] See CRS Report 95-548 ENR, *Forest Health: Overview.*

A second reason given is to improve relations between the federal agencies and county governments by funding cooperative activities. Critics have argued that the federal land management planning processes have alienated many local groups that could, in fact, agree on management goals and direction for the lands, and point to the Quincy Library Group[31] as evidence of the potential for local cooperation. Advisory committees with broad, local representation and county funding of management projects are proposed as ways to essentially force the agencies to work more closely with local interests in making decisions. Opponents have expressed concerns about excessive local influence over, and even control of, the national forests and other public lands.

Some have suggested that counties could be allowed to choose not to participate in the reinvestment requirement. A floor amendment in the House to make the 20% reinvestment optional was defeated, 241-186.[32] Alternatively, H.R. 1185 would allow the states to choose the proposed formula or to continue under existing law. This option could also be extended to the payments (with reinvestment) under H.R. 2389 or S. 1608. This might allow the states and/or counties which might see a significant decline in funds available for roads and schools (as discussed below) to elect to remain under the current compensation system.

County Authority and Responsibility. The bills would require reinvestment only for those counties receiving payments exceeding $100,000. The counties would apparently control these funds, even though the current road and school payments from the states are not always made to the counties (*e.g.*, states can allocate the payments directly to school districts). This raises a question of whether and how a county — whose allocation exceeds $100,000, but in a state where the payments are made to some other governmental entity (*e.g.*, a school district) — would be required to invest a share of a payment that the county doesn't directly receive. This also implies that the 41 states which receive the 25% FS payments would have to amend their state laws that govern the distribution of those funds.

The amount of money going to roads and schools would also decline in some counties under the reinvestment proposal. In most counties, the increased payments under Title I of the bills would be greater than the amount to be reinvested in the national forests; however, as noted earlier, several national forests are at their peak revenues. Requiring counties in those areas to use a portion of their payment for national forest investments would reduce the funding available to support roads and schools. For example, the four Pennsylvania counties containing the Allegheny National Forest received their highest payments ever in 1998; the bills would require

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[31] The Quincy Library Group is a collection of individuals representing various perspectives who met in the Quincy, CA, library (as the only "neutral territory") to develop a common vision for the management of certain national forest lands in California. To test the viability of management under a common vision agreed to by disparate local interests, the agreement was enacted as temporary management guidance in the Herger-Feinstein Quincy Library Group Forest Recovery Act, Title IV of the Interior and Related Agencies Appropriations Act for FY1999, contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY1999 (P.L. 105-277).

[32] 145 *Congressional Record* 153 (Nov. 3, 1999): pp. H11409-H11419.

them to use 20–25% of the future payments in national forests, rather than on roads and schools. Also, a county which would receive $95,000 under the formula in Title I of the bills would have more money available for roads and schools ($95,000) than would a county which would receive $105,000 (at 20%, $84,000 for roads and schools and $21,000 for national forest investments).

Under the bills, the counties would be responsible for proposing investment projects, for funding the necessary environmental review (although project funds could be used for this activity), and for reaching an agreement (H.R. 2389) or Memorandum of Understanding (S. 1608) with the agency for implementing the project. H.R. 2389 (§202) explicitly states that funds "shall be expended solely on projects that meet the requirements of this title and are conducted on the Federal lands." This implies that any county costs to administer the investment funds (*e.g.*, to develop proposals, reach agreements, *etc.*) must be paid from existing county budgets.

Finally, neither of the bills specify who is responsible for the operations and maintenance costs of development projects. For federal water projects and related facilities, water user groups are generally responsible for the cost of operations and maintenance. The counties might be held responsible for operating and maintaining the projects they propose, but this is unclear in the bills.

Federal Responsibilities. The two bills differ in the manner in which federal authority and responsibility are specified. S. 1608 (§6(b)) would require proposed projects to:

> (1) be nominated and paid for, in whole or in part, by the eligible county;
> (2) be in compliance with the applicable resource management plan *or* any watershed or subsequent plan developed pursuant to the resource management plan and approved by the appropriate Secretary; [emphasis added]
> (3) be recommended by the appropriate investment project advisory committee formed pursuant to section 7;
> (4) be in compliance with all applicable environmental laws;
> (5) be approved by the appropriate Secretary with whom the final project authority lies;
> (6) assure that the sale of any commodity ... shall be on a competitive bid basis to receive at least fair market value. For any eligible project not subject to competitive bidding or involving ecosystem restoration, infrastructure, or other resource stewardship work, the appropriate Secretary shall, to the maximum extent feasible, use best value stewardship contracting [defined in §3(n) of the bill]; and
> (7) be governed by a Memorandum of Understanding between the eligible county and the appropriate Secretary ...

These provisions raise questions about who is responsible for assuring "compliance" who can be sued for alleged failures to fulfill these legal requirements, and whether, or to what extent, existing agency programs and policies allowing public reviews and administrative challenges are appropriate or feasible.

H.R. 2389, as passed by the House, establishes a different approach. Under §204(a), the Secretary *may* approve a project *only if*:

(1) The project complies with all Federal laws and all Federal rules, regulations, and policies.

(2) The project is consistent with the applicable resource management plan *and* with any watershed or subsequent plan developed pursuant to the resource manage-ment plan and approved by the Secretary concerned. [emphasis added]

Subsection (b) specifies that environmental reviews are to be conducted prior to the Secretary's approval, although challenges to those reviews can only occur after the approval. Finally, subsection (d) specifies that a decision to reject a proposal "shall be at the Secretary's sole discretion" — *i.e.*, the Secretary cannot be sued for rejecting a project— while a decision to approve a project "shall be considered a final agency action under the Administrative Procedures Act" — *i.e.*, when the decision can be litigated. This structure seems intended to alleviate many of the concerns raised over the approach in S. 1608, although it is unclear whether the opponents of the reinvestment proposal will be satisfied.

Disposition of Unused Funds. Both bills would require the counties to return any funds which had not been obligated for approved projects. Under S. 1608, the counties would have three years to propose sufficient projects to use the funds; unobligated balances would be deposited in new special accounts for each region, and could be spent by the federal agency on other county-proposed projects within the region. Under H.R. 2389, the counties would have one year to propose sufficient projects to use the funds; unobligated balances would be returned to the Treasury and redistributed proportionally in the subsequent year to those counties that had fully obligated their payments. In both cases, the counties would have incentives to propose spending the funds on projects likely to be approved (*i.e.*, "use it or lose it").

Disposition of Project Receipts. The projects proposed and funded by the counties might generate revenues, if for example the project includes selling timber or building a campground. Both bills provide direction on the disposition of any revenues that might be generated by the county-funded projects. S. 1608 directs that receipts from any project receiving county funds (regardless of the share of funds provided by the county) be deposited in a special account for each region (together with unused funds, as described above) and be spent on other county-proposed projects within the region. H.R. 2389 would allocate receipts, after deposits to relevant trust funds, between the county and the agency based on the portion of project funding from each (*i.e.*, if a project is 100% funded by a county, the county would get 100% of the receipts). Counties could then use the receipts to fund additional projects, while the agencies could use the receipts for "infrastructure maintenance or ecosystem restoration" on the national forest or BLM district where the receipts were generated.

These proposals for disposing of receipts from county-funded projects are likely to raise concerns among some interest groups. The provision in S. 1608 arguably gives the agencies an incentive to approve revenue-generating projects so that they can fund additional projects (including revenue-generating projects, thereby creating a self-perpetuating cycle). The provision in H.R. 2389 arguably gives the counties an incentive to emphasize revenue-generating projects, and the agencies an incentive to approve such projects.

Source of Funds for Additional Payments

One critical issue is how to pay for the additional payments being proposed — possibly $250 million or more annually. In its 1999 legislative proposal, the Administration identified changes to reduce spending on several USDA agricultural programs to generate the necessary funding. Concerns about reductions in these programs may have been a reason why the Administration could not get the proposal introduced. The NACo proposal and two of the bills (H.R. 1185 and H.R. 2868) do not specify the source of funds for the permanently appropriated payments. It is not clear where the funds would come from, although the most likely source would simply be from the General Fund of the Treasury.[33]

As introduced, H.R. 2389 would have directed the payments be made from (a) agency revenues, and/or (b) from agency appropriations (essentially reprogramming funds without direction or limitation), but not from trust funds or special funds and not from any program which generates revenues. For the FS, revenues — net of deposits to the various trust and special funds — have been less than the amount needed to make the 25% and "spotted owl" payments over the past several years.[34] Revenues are thus unlikely to be sufficient to make the higher proposed payments, and the payments would have to be reprogrammed from appropriations. Because of the bill's prohibition on using appropriations from revenue-generating programs, many expected (some desired and others feared) that the funds would be taken from environmental protection — *e.g.*, soil, water, and air ($27 million in FY2000) and wilderness ($30 million in FY2000) — although wildfire preparation and fighting ($561 million), fish and wildlife habitat management ($109 million), research ($203 million), state and private forestry assistance ($208 million), and other appropriations would also be feasible sources. In addition, although funds could not be taken from the permanent trust and special funds, the agency has substantial discretion over the allocation of timber receipts to such funds, and could reduce deposits to the funds.[35]

Because of disagreements over the source of funds, H.R. 2389 was amended to eliminate the permanent appropriation of the payments. Instead, as passed by the House, the bill would require an annual appropriation in the Department of the Interior and Related Agencies Appropriations bill to meet the full authorized payments.

S. 1608 takes a different approach. The permanently appropriated payments "shall be derived first from any revenues, fees, penalties, or miscellaneous receipts, exclusive of deposits to any relevant trust fund ..." from the national forests or BLM

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[33] Legislation that increases spending is generally required to contain offsetting spending reductions, but none of these proposals contain such offsets.

[34] Since 1996, the "Owl" payments have come directly from the Treasury, rather than from FS and BLM receipts.

[35] For example, in August 1996, deposits to the K-V and Salvage Funds from timber sales were halted for the remainder of FY1996 to assure that sufficient funds were available to make the 25% payments that year. Memo to Regional Foresters, from Gray F. Reynolds, Deputy Chief, *Subject: Timber Sale Receipts*, dated August 27, 1996, 1 p.

lands. Additional funds are derived "secondly, as determined by the Secretary of the Treasury, from any funds in the Treasury not otherwise appropriated." Thus, the Treasury Secretary would have the discretion to use any unappropriated federal revenues — mineral royalties, excise taxes, customs duties, personal and corporate income taxes, *etc.* — to make the payments.[36] This would retain the incentive for some interests, such as taxpayer groups, to advocate revenue-generating activities, but would reduce the pressure on the FS and BLM (because the payment is assured) and would eliminate the current incentive for the counties to advocate revenue-generating activities (unless the county allocation was tied to the relative level of revenues generated in each national forest).

Interaction With Other Payment Programs

In addition to the Forest Service and BLM revenue-sharing programs, counties are directly compensated for the tax-exempt status of many federal lands under the Payments In Lieu of Taxes (PILT) program. Enacted in 1976, the PILT Act directs the BLM to make payments to the counties, but the payment amount is affected by a number of factors, including revenue-sharing payments. The complicated PILT formula is explained in CRS Report 98-574 ENR, *PILT (Payments In Lieu of Taxes): Somewhat Simplified*, and is summarized in Box 1.

The additional payments proposed under the various bills are likely to be counted as Forest Service and BLM payments to counties for identifying the PILT payments and therefore may affect a county's PILT payment. H.R. 2389 and S. 1608 would explicitly amend the PILT statute to include the additional payments in the list of payments that reduce PILT payments. Whether the PILT payments would actually be reduced depends on several factors, including the county's population,[37] federal land revenue-sharing payments,[38] and the standard and minimum PILT rates.[39] Four examples might help to understand the possibilities:

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[36] This secretarial "choice" is largely irrelevant, because unappropriated revenues are all deposited in the General Fund of the Treasury, and thus the payments would come from the General Fund. It is unclear whether the Secretary might have the discretion to choose no unappropriated revenues (effectively making no additional payments). This proposal also contains no offsetting spending reductions for the additional expenditures.

[37] The PILT Act contains a ceiling payment that depends on the county's population.

[38] This is *other* payments to counties from the federal agencies managing the eligible lands. If state law directs the counties to pass all or part of these other payments to some other local governmental unit (*e.g.*, to an independent school district), the pass-through funds are not counted as payments to the counties.

[39] The standard PILT rate was originally enacted as $0.75 per eligible acre; the minimum PILT rate was originally $0.10 per eligible acre. In 1994, the PILT Act was amended to increase the standard and minimum rates over five years (to adjust for inflation between 1976 and 1994) to $1.65 and $0.22 per eligible acre, respectively, in 1999. These rates are indexed for inflation after 1999.

Box 1. How to Calculate PILT Payments

1. Calculate the PILT ceiling payment for each county, based on the county's population.

2a. Identify the *lesser* of:
   i. The PILT ceiling payment for the county; or
   ii. The eligible acres in the county times the standard payment rate

   From the smaller one, deduct the previous year's payment for all eligible lands.

2b. Identify the *lesser* of:
   i. The PILT ceiling payment for the county; or
   ii. The eligible acres in the county times the minimum payment rate.

3. Identify the full authorized payment amount as the *greater* of the payments identified under 2a or 2b.

4. Compare the enacted appropriation with the total authorized payments, and make the payments accordingly:
   a. If the appropriation meets or exceeds the total, pay each county the full authorized payment.
   b. If the appropriation is less than the total, pay each county an equal percentage share of the full authorized payment.

Example 1. The county's full authorized PILT payment is determined by the population ceiling. In this case, increasing the revenue-sharing payments would not reduce the full authorized PILT payment, and thus the total federal land-based payment to the county would increase. This outcome is most likely in counties with low populations.

Example 2. The county's full authorized PILT payment is determined by the standard PILT payment for eligible acres (under #2a in box 1), both currently and under the higher revenue-sharing payments. In this case, the full authorized PILT payment would decline in the subsequent year by exactly the same amount as the additional revenue-sharing payments, and thus the total federal land-based payment to the county would not increase (although the timing might be shifted forward, because of the time lag in the PILT payment offset). This outcome is most likely in counties with relatively low revenue-sharing payments (*i.e.*, those with peak revenue-sharing payments per acre below the PILT standard payment).

Example 3. The county's full authorized PILT payment is currently determined by the standard PILT payment for eligible acres (under #2a in box 1), but would be determined by the minimum PILT payment for eligible acres (under #2b in box 1) under higher revenue-sharing payments. In this case, the full authorized PILT payment would decline in the subsequent year from the standard PILT payment (net of current revenue-sharing payments) to the minimum PILT payment, and thus the total federal land-based payment to the county would increase, but by less than the additional revenue-sharing payments (how much depends on the amount of the additional payment needed to reduce the standard PILT payment to the minimum). This outcome is most likely in counties with moderate revenue-sharing payments (*i.e.*, those with peak revenue-sharing payments per acre above, but current payments below, the PILT standard payment).

Example 4. The county's full authorized PILT payment is determined by the minimum PILT payment for eligible acres (under #2b in box 1), both currently and under higher revenue-sharing payments.[40] In this case, the full authorized PILT payment would be unaffected by additional revenue-sharing payments, and the total federal land-based payment would increase by the amount of the additional revenue-sharing payments. This outcome is most likely in counties with relatively high revenue-sharing payments (*i.e.*, those with current revenue-sharing payments per acre above the PILT standard payment).

There could be two further complicating factors. The first is the source of funding for the additional payments. As noted above, H.R. 2389 (as passed by the House) would require annual appropriations for the additional payments. Under this approach, the magnitude of the change in PILT payments that result from the additional authorized payments depends on how the appropriations for each program compares to the full authorized payments under each program. PILT appropriations have been less than the authorized level for several years, and it is possible that appropriations for both PILT and the additional "revenue-sharing" payments might continue to be less than the full authorized payments.

Second, all else being equal, any increase in payments of the various federal land payment programs would probably reduce the national aggregate demand for PILT payments in the subsequent year. Higher "revenue-sharing" payments, such as proposed in these bills, would reduce the full authorized PILT payments in at least some counties (see examples 2 and 3, above). In recent years, PILT appropriations have been substantially below the authorized level. If that were to continue, the lower full authorized PILT payments in some counties (because of higher other payments) might allow higher PILT payments for those counties *not* receiving those higher "revenue-sharing" payments. For example, in FY1999, the full authorized PILT payment nationally was $303.7 million, while the PILT appropriation was $124.6 million; thus, counties received 41% of their full authorized PILT payment in FY1999. If higher revenue-sharing payments had been enacted and had reduced the full authorized PILT payments in the counties receiving those higher payments by, say, $50 million, it would have allowed the same PILT appropriation ($124.6 million) to

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[40] It should be recognized that counties receive the minimum PILT rate when other federal land payments are relatively high. Thus, it seems paradoxical that counties receiving the minimum PILT payment are among the highest in total federal land payments.

fund a greater share — 49% — of the full authorized PILT payments ($253.7 million = $303.7 million – $50 million). Hence, additional payments for counties because of FS and BLM lands would not only benefit those counties, but may also benefit other counties with federal lands because of the adjustments in PILT payments (assuming that PILT appropriations remain below the full authorized PILT level).

Summary and Conclusion

The FS and BLM are required to share a portion of their revenues with the counties where their lands are located. Concerns have arisen because declining timber sale revenues have reduced the county payments. Groups are also concerned about the substantial annual variability of the payments, and some seek to "de-link" the payments, so that counties would no longer benefit directly from timber sales. The Clinton Administration and the National Associations of Counties have offered proposals, and four bills have been introduced to alter the current payment system. These proposals raise various issues about compensating the counties for the tax-exempt status of federal lands.

The existing compensation system is a mix of complicated programs, some of which interact with one another, which allows for a multitude of possible changes. In addition, the current system contains a wide array of current results, with some counties being at or near their peak compensation and others at a small fraction of payment levels from a decade ago. Understanding the ramifications of proposed changes on this variety of current situations is difficult, at best, when proposals alter various aspects of the complex existing system using historical patterns, which also vary widely, to establish a new system for an uncertain future. Depending on the choices made for the temporal and geographic basis for compensation, the duration of the changes, the authorized and required uses of the payments, the nature and source of the funding, and the interaction with other payment programs, legislative changes can have significant unintended consequences for the counties, the many interest groups, the agencies, and the U.S. Treasury.